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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,403	12/17/2003	Janakiraman Vaidyanathan	67,097-033; EH-11026	8005

26096 7590 01/14/2008
CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

EXAMINER

LEE, JOHN W

ART UNIT	PAPER NUMBER
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2624

MAIL DATE	DELIVERY MODE
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01/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/738,403	Applicant(s) VAIDYANATHAN, JANAKIRAMAN	
	Examiner John Wahnkyo Lee	Art Unit 2624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-16.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


 SAMIR AHMED
 SUPERVISORY PATENT EXAMINER

Attachment to Advisory Action

1. The response received on 03 January 2007 has been placed in the file and was considered by the examiner. An action on the merits follows.

Response to Arguments

2. The applicant's argument filed on 7 December 2007 has been fully considered. A response to the argument is provided below.

The MPEP ¶2143 discloses that "the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." In addition, MPEP 2143 discloses the exemplary rationales that can support a conclusion of obviousness. The exemplary rationales show that the combination of references does not have to provide benefit. Even though Both Park and Shashua solve the problem using different method, it does mean that Park and Shashua is not combinable or teach away from the combination. Both Park and Shashua are related with generating a 3D object or 3D image based on 2D projection or 2D images. So, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Park's method in Shashua's invention to

substitute one method for the other to achieve the predictable result of generating a 3D image from 2D data.

Further, the examiner does not find the fact that "more than one camera for obtaining 2D is not desirable" and "the entire reason for using the scanned light is to obtain 3D images with only one 3D image" on Park's reference as the applicant argues, which seems an argument based on the applicant's hindsight rather than the fact or information disclosed by Park. Park is using a light projector(s) and a camera achieves 2D images or projections to generate a 3D object (Figures 1-4; pages 66-67). Shashua utilizes many 2D images to generate a 3D image. So, Both Park and Shashua are related with generating a 3D object or 3D image based on 2D projection or 2D images, and the two references do not teach away from the combination.

Further, the combination would not require a change in operation of the primary reference (Shashua) as to destroy its intended operation. Park does disclose methods using one camera, but it is not disclose anywhere that Park's method is trying to eliminate the need for more than one camera and view to reduce accumulation errors and problems with the use of multiple cameras and images, which seems an argument based on the applicant's hindsight rather than the fact or information disclosed by Park. Of course, Park is using only one camera for implementing its method, but there is no information that Park is trying to use only one camera or more than one camera should not be used for the implementation. So, the combination of Shashua and Park is valid without destroying without destroying the primary reference (Shashua)'s intended operation.

Accordingly, Shashua and Park uses a different method related with generating a 3D object or 3D image based on 2D projection or 2D images, but the two references are combinable as discusses above based on the MPEP ¶2143, which discloses the Supreme Court in KSR International Co. v. Teleflex Inc., 550 U.S. ___, ___, 82 USPQ2d 1385, 1395-97 (2007).

Therefore, the combination of Shashua and Park is valid, and the rejection to the claims cannot be withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Wahnkyo Lee whose telephone number is (571) 272-9554. The examiner can normally be reached on Monday - Friday (Alt.) 7:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John W. Lee
(AU 2624)



SAMIR AHMED
SUPERVISORY PATENT EXAMINER